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On September 19, 2011, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing to Herbert Dwane Miller (Miller) in which the Commission charged him with Gross Neglect of Duty pursuant to ORS 342.175(1)(b); OAR 584-020-0040(4)(n), OAR 584-020-0010(5), OAR 584-020-0040(4)(b), and OAR 584-020-0040(4)(q). The Notice was sent via U.S. First Class Mail and U.S. Certified Mail Receipt 7010 2780 0000 2187 6935 to the address on file with the Commission. Miller signed for the certified mail on September 21, 2011. The Notice of Opportunity of Hearing, dated September 19, 2011, and signed by Victoria Chamberlain, Executive Director, stated:

“IF A REQUEST FOR HEARING IS NOT RECEIVED WITHIN THIS 21-DAY PERIOD, YOUR RIGHT TO A HEARING SHALL BE CONSIDERED WAIVED UNLESS YOUR FAILURE TO REQUEST A HEARING WAS BEYOND YOUR REASONABLE CONTROL. IF YOU DO NOT REQUEST A HEARING OR IF YOU FAIL TO APPEAR AT A HEARING, THE COMMISSION WILL ADOPT AN ORDER OF DEFAULT WHICH MAY INCLUDE THE REVOCATION OR SUSPENSION OF YOUR LICENSE OR OTHER DISCIPLINE.”

Miller did not request a hearing. The Commission, therefore, finds Miller to be in default and enters the following findings of fact, conclusions of law and order, based on the files and records of the Commission concerning this matter.

FINDINGS OF FACT

1. Miller has been licensed as a teacher in Oregon since January 21, 1974. Miller's current Standard Teaching License, with Basic Physical Education and Standard Elementary endorsements, issued on August 24, 2006, was valid until August 23, 2011. Miller made timely application for renewal of his license, but his application status was pending completion of the investigation process. During all relevant times, Miller was employed as a substitute teacher by the Jefferson County School District.

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2. On April 22, 2011, an educational assistant witnessed Miller access sexually explicit materials on a school district computer. Also present in the computer lab at this time were several students watching a movie on a separate computer.

CONCLUSIONS OF LAW

Herbert Dwane Miller's above described conduct constitutes gross neglect of duty in violation of ORS 342.175(1)(b); OAR 584-020-0040(4)(n) as it incorporates OAR 584-020-0010(5) (*Use professional judgment*); OAR 584-020-0040(4)(b) (*Knowing and substantial unauthorized use of employment time or school resources for private purposes*), and OAR 584-020-0040(4)(q) (*Knowing and unauthorized use of school computer equipment to receive, store, produce or send sexually explicit materials*).

The Commission's authority to impose discipline in this matter is based upon ORS 342.175.

FINAL ORDER

The Commission hereby denies Herbert Dwane Miller's application for renewal and suspends his right to apply for a teaching licensure for a period of one year from the date of this order.

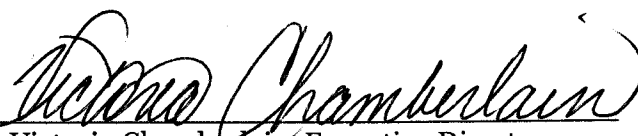
Herbert Dwane Miller will be placed on probation for a period of four (4) years from the date of reinstatement subject to the following condition:

Mr. Miller shall comply with the Standards for Competent and Ethical Performance of Oregon Educators under Oregon Administrative Rules Chapter 584, Division 020.

Violation of any term or condition of probation shall constitute an independent basis for the Commission to revoke Mr. Miller's teaching license, revoke his right to apply for a license, or otherwise impose discipline, after first providing Mr. Miller with notice and opportunity for hearing.

IT IS SO ORDERED THIS 6th day of January, 2012.

TEACHER STANDARDS AND PRACTICES COMMISSION

By: 
Victoria Chamberlain, Executive Director

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3 NOTICE OF APPEAL OR RIGHTS
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5 YOU ARE ENTITLED TO JUDICIAL REVIEW OF THIS ORDER. JUDICIAL REVIEW MAY BE
6 OBTAINED BY FILING A PETITION FOR REVIEW WITHIN 60 DAYS FROM THE SERVICE OF
7 THIS ORDER. JUDICIAL REVIEW IS PURSUANT TO THE PROVISIONS OF ORS 183.482 TO
8 THE OREGON COURT OF APPEALS.